IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.210 OF 2004

1. Shri Madhav Krishnaji Gosavi
2. Shri Murlidhar Krishnaji Gosavi
3. Shri Limraj Krishnaji Gosavi..Appellants
(Orig. Plaintiffs)

Versus

1. Shri Vinayak Rangnath Gosavi
2. Shri Bal Rangnath Gosavi
3. Sou Prabhavati Umakant Darshani
4. Shri Sudhakar Rangnath Gosavi
4A. Smt. Janabai Sudhakar Gosavi
4B. Shri Mahesh Sudhakar Gosavi
4C. Smt. Rajendra Kelvan
5. Sou Lilavati Sopan Pawar
6. Shri Vilas Mahadeo Mane
7. Sou Hemlata Vasantrao Malunkar..Respondents
(Orig.Defendants)

Mr. A.A. Kumbhakoni for the Appellants
Ms. Smita Mane with Mr. P.B. Shah for the Respondents

CORAM : S.R. SATHE,J.
DATED : 13/07/2007

ORAL JUDGEMENT :-

1. Heard finally at admission stage.

2. The appellants-original Plaintiffs have preferred this appeal against the judgement and order passed by the Court of Second Additional District Judge, Baramati in Civil Appeal No.100 of 1999 whereby the order passed by the Joint CJJD, Indapur dismissing the Plaintiff's suit for partition and separate possession was confirmed. For the sake of convenience

hereafter the parties shall be referred to as 'Plaintiffs' and 'defendants'.

3. The brief facts giving rise to this appeal are as under :-

Plaintiff's father Krishnaji Damodar Gosavi and father of defendant No.1 to 4 Rangnath Damodar Gosavi were real brothers in the year 1942. There was partial partition between Krishnaji Damodar Gosavi and Rangnath Damodar Gosavi and accordingly, 'Vatap Yadi'-'memorandum of partition' was prepared on 09/09/1942 (Exh-56). The suit property old survey No.1 bearing new Gat No.4 was allotted to the share of Rangnath. However, it is a Plaintiff's case that on 10/03/1943 a deed (Exh-57) was prepared in between Krishnaji and Rangnath whereby they agreed that the suit property be kept common and income of the same be used for celebrating 'Janmashtami' festival and for that purpose income of the said land be used. Accordingly, though such arrangement continued for several years, the defendant No.1 decided to sell the suit property. Hence, Plaintiffs called upon the defendant Nos. 1 to 4 to partition the suit land and give separate possession of their share but the defendants refused. Hence, Plaintiffs filed suit for

partition and separate possession of the suit property.

4. On 07/02/1990, the defendant Nos. 1 to 4 sold some portion to the suit property to defendant No.5 for Rs.90,000/- and then on 10/01/1994, defendant No.5 sold the same to defendant Nos.6 and 7. Hence, they were also impleaded in the suit.

5. The defendant Nos. 1 to 3 remained absent though duly served. The defendant No.4 filed his written statement at Exh-17 and admitted the relationship between the parties and that it was ancestral property. They however denied the Plaintiffs claim that suit property was kept joint between Krishnaji and Rangnath and that it was agreed to utilize income of the same for the celebration of 'Janmashtami'. He also contended that right from 1942, suit property was not in possession of Rangnath and after his death, it is in possession of the defendants. He also denied the Plaintiff's right in the suit property as claimed on the basis of deed dated 10/03/1943 Exh-57 and prayed for the dismissal of the suit.

6. The defendant No.5 filed Written Statement Exh-

24 and contended that she is the bonafide purchaser for value without notice and the suit land was in fact owned by Krishnaji and defendant has no right, title and interest in the same. The said defendant also therefore prayed for the dismissal of the suit.

7. The defendant Nos. 6 and 7 appeared and filed their Written Statement and opposed the suit claim on the similar grounds.

8. On the above mentioned pleadings, the learned Trial Judge framed issues at Exh-39. In support of their respective claims both the parties adduced oral and documentary evidence. After considering the said evidence, the learned Trial Judge came to the conclusion that Plaintiff has failed to prove that the suit property is joint family property of Plaintiffs and defendant Nos. 1 to 4. He also held that the Sale Deeds dated 07/02/1990 and 10/01/1994 are binding on Plaintiffs and defendant No.5 is bonafide purchaser for value without notice. Naturally, the learned Trial Judge dismissed the Plaintiff's suit.

9. Being aggrieved by the said order the original defendants filed Civil Appeal but the same also came to

be dismissed. The above mentioned order of dismissal of the appeal is challenged by the defendants in the present second appeal.

10. In this appeal before me Shri Kumbhakoni, learned Advocate for the Plaintiffs submitted that both the Courts below have not properly appreciated the evidence on record and have wrongly held that the Plaintiffs have failed to prove that the suit property is joint property of Plaintiffs and defendants. Secondly, he canvassed before me that the Courts below ought to have considered document dated 09/09/1942 only in respect of partial partition and the Courts below erred in not considering the effect of document dated 10/03/1943. As against this, Shri P.B. Shah, learned Advocate for the Respondent No.5 submitted that there is no substantial question of law involved in this appeal and the appeal against original defendant Nos. 1 to 4 is already dismissed and defendant No.5 is bonafide purchaser for value without notice and as such, Writ Petition be dismissed.

11. The relationship between the parties is not in dispute. It is also an admitted fact that suit property was ancestral property. However, admittedly partition

in respect of the said ancestral property took place between Krishnaji, father of the Plaintiff and his brother Rangnath, father of defendant No.1 to 4 on 09/09/1942. The said document by virtue of which 'Vatapyadi' was prepared is at Exh-56. From the perusal of the same, it is very clear that the suit property i.e. original survey No.1 is allotted to the share of Rangnath i.e. father of defendant Nos. 1 to 4. In fact, the Plaintiffs also did not dispute the said position. However, it is the case of Plaintiffs that subsequently another document “sammati-patra”-”consent deed” was prepared on 10/03/1943 and by virtue of the said document Exh-57, it was agreed to keep the suit land joint between Krishnaji and Rangnath and it was also agreed to utilize the income of the said land to meet the expenses required for celebration of “Krishna-Janmashtami”. However, the defendants have denied the execution of this document. Apart from it, what is more to be noted is that the evidence on record clearly goes to show that this document was never acted upon. If really the said property would have been subsequently kept joint as tried to be suggested by the Plaintiff then certainly, Plaintiff would have made efforts to get their names entered in the record of rights in respect of the suit property. But we find that neither

Krishanji nor his heirs namely present Plaintiffs made any efforts in that behalf and throughout the property remained in the name of Rangnath and thereafter, his heirs. So, the said document does not help the Plaintiffs to prove that the suit property is the joint family property or that it is kept joint and they are entitled to get share in it.

12. It has come on record that Krishnaji had filed suit No.165 of 1956 against the defendants. The said suit was compromised. Even in the said compromise, there is no reference of the suit property. What is more to be noted is that if really the suit property would have been kept common or joint by virtue of Exh-57 then certainly defendants would have raised contention to that effect when the dispute arose between the parties. But we find that even at that time, the Plaintiffs did not raise any contention in that behalf. From the perusal of the judgement of both the Courts below it is very clear that both the Courts have considered the entire evidence on record in its proper perspective and have rightly held that Plaintiffs have failed to prove that the suit property is the joint family property or that it was kept joint as alleged by the Plaintiffs.

13. Thus, we find that both the Courts below have recorded concurrent finding of fact that Plaintiffs have failed to prove that the suit property is the joint family property of Plaintiffs and defendants and Plaintiffs are having right to claim partition in the same. The said finding can not be challenged in the present Second Appeal. There is nothing on record to show that the said finding is perverse. Under the circumstances of the case it is clear that the Respondent No.5 is bonafide purchaser for value without notice. Order passed by the learned Additional District Judge is legal and correct. There is no need to interfere with the same.

14. In this view of the matter, there is no substance in this appeal.

Hence, the appeal is dismissed. The appellant to pay costs of this appeal to Respondent No.5 and bear their own.

(S.R. SATHE,J.)